

1 Paul R. Kiesel, State Bar No. 119854
2 *kiesel@kiesel.law*
3 Bryan Garcia, State Bar No. 216904
4 *garcia@kiesel.law*
5 Ashley Conlogue, State Bar No. 292083
6 *conlogue@kiesel.law*

KIESEL LAW LLP
8648 Wilshire Boulevard
Beverly Hills, California 90211-2910
Tel: 310-854-4444
Fax: 310-854-0812

*Attorneys for Plaintiffs
Armando Villanueva and Hortencia Sainz*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

1 ARMANDO VILLANUEVA and
2 HORTENCIA SAINZ, individually and
3 as successor in interest to Pedro
4 Villanueva, deceased, and FRANCISCO
OROZCO, individually,

Plaintiffs.

VS.

8 STATE OF CALIFORNIA; JOHN
9 CLEVELAND; RICH HENDERSON;
and DOES 1-10, inclusive.

Defendants

**MANDATORY CHAMBERS COPY
E-filed Document FILED
7/13/18 AT 6:48 p.m. PST**

Case No. 8:17-cv-01302 JLS (KESx)

**DECLARATION OF EXPERT
DAVID BALASH IN SUPPORT OF
PLAINTIFFS ARMANDO
VILLANUEVA AND HORTENCIA
SAINZ' OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

[Filed concurrently with Plaintiffs' Armando Villanueva and Hortencia Sainz' Opposition to Defendants' Motion for Summary Judgment; Memorandum of Points and Authorities in Support Thereof; Response to Defendants' Separate Statement of Undisputed Material Facts and Conclusions of Law; Declaration of D. Bryan Garcia and Exhibits Thereto; Declaration of Scott DeFoe; Declaration of Edward Fatzinger]

Date: August 10, 2018

Time: 2:30 p.m.

Crtrm.: 10A - 10th Floor

Judge: Hon. Josephine L. Staton

1 **DECLARATION OF DAVID E. BALASH**

2 I, David E. Balash, declare as follows:

3 1. I am an Independent Firearms Examiner/Forensic Science Consultant. This
4 work entails examination of evidence, case evaluations and crime scene re-
5 construction consistent with work I performed at a crime laboratory. I have expertise
6 in bullet trajectory. I have qualified as an expert on bullet trajectory and shooting
7 reconstruction numerous times.

8 2. I am a competent adult and personally familiar with the facts contained herein
9 and would and could competently testify thereto if called upon to do so.

10 3. Before reaching my opinions in this case, I reviewed the following
11 documents:

- 12 a. CHP Officer Involved Shooting Investigation
 - 13 b. CHP Scene Photographs
 - 14 c. CHP Shooting Victim Photographs
 - 15 d. Orange County Crime Laboratory Ballistics Report
 - 16 e. Orange County Crime Laboratory Photographs
 - 17 f. Orange county Crime Laboratory Chevrolet truck processing
18 photographs
 - 19 g. Orange County Sheriff's Corner Report
 - 20 h. Statement of Sgt. Cleveland
 - 21 i. Statement of Officer Henderson
 - 22 j. Photographs of Francisco Orozco's injuries
 - 23 k. Federal Rule of Civil Procedure ("FRCP") Rule 26 Report of Scott
24 A. DeFoe
 - 25 l. FRCP Report of Edward C. Fatzinger
- 26 4. In addition to the documents above, I base my opinions on the following:

- 1 a. My experience as a Michigan State Police Officer for over 25 years
2 rising to the rank of D/Lt. in charge of the Firearms, Tool-Mark and
3 Bombs and Explosive Unit of the MSP Northville Forensic Science
4 Laboratory; my experience for over 20 years as a member of the
5 Michigan State Police Forensic Science Laboratory in the Firearms
6 Identification, Tool Mark, Bombs and Explosive Unit;

7 b. My experience with the Michigan State Police as a Crime Scene
8 Analyst participating in and supervising hundreds of crime scene
9 investigations during my years with the department;

10 c. My experience at photographing and collecting evidence at crime
11 scenes while with the Michigan State Police;

12 d. My experience at photographing, participating in and collecting
13 evidence at autopsies for over 20 years;

14 e. Training sessions on crime scene reconstruction both as a member of
15 the Michigan State Police and as a civilian examiner;

16 f. My experience in investigating shooting crime scenes for over 20 years
17 as a member of the Michigan State Police and then continuing to utilize
18 that experience as a self-employed examiner in assessing shooting
19 crime scenes for the past 25+ years;

20 g. My experience at having examined hundreds of shooting victims at
21 crime scenes, autopsies, hospitals and funeral homes;

22 h. My experience at taking and interpreting X-Ray's in bomb squad work
23 and training as well as at using and interpreting X-Ray's at crime
24 scenes, autopsies and hospitals for the past 45+ years.

25 5. Sgt. Cleveland fired two shots at the red Chevrolet Silverado truck when he
26 was to the right passenger side of the truck and out of the truck's path. One of Sgt.
27 Cleveland's shots struck the driver Pedro Villanueva, and one of Sgt. Cleveland's

1 shots struck the passenger Francisco Orozco. Sgt. Cleveland was not in front of the
2 truck when he fired his two shots and was not about to be struck by the truck when
3 he fired at the passenger side window of the truck.

4 6. Sgt. Cleveland was also not in the path of the truck when Investigator
5 Henderson fired his shots. When the shots started, Sgt. Cleveland moved to his left
6 toward the west curb on Pritchard Avenue and got out of the path of the truck, and
7 the truck was only travelling at approximately 3-5 miles per hour based on the
8 forensic examination by Edward C. Fatzinger and the physical evidence at the scene.

9 7. This was not a high-speed vehicle assault. The truck could not have been
10 traveling at any substantial speed at the time of impact with the undercover vehicle,
11 considering the minimal damage to both vehicles. The following evidence further
12 indicates that the truck was travelling slowly: The truck was approximately 15-20
13 feet from the undercover vehicle when it began moving forward. The distance
14 between the side of the damaged parked car and the rear of the truck in its final
15 resting spot is approximately 17 feet. Officer Henderson fired 12 rounds at the front
16 of the truck. Most qualified officers, at best, are able to discharge their weapons
17 between 3-4 rounds per second. Therefore, assuming the truck only travelled up to
18 approximately 25 feet from the point of impact with the parked car to the point of
19 impact with the undercover vehicle, it would take Officer Henderson 3-4 seconds to
20 fire his rounds. Assuming the truck travelled no more than 25 feet in approximately
21 3-4 seconds, the truck would have been travelling at approximately 3-5 miles per
22 hour.

23 8. The bullet marked as #3 on the Orange County Sheriff's Coroner's report,
24 autopsy protocol for Mr. Villanueva, as well as a bullet found in the passenger's side
25 of the pickup in the front seat area, have both been identified by the Orange County
26 Crime Lab as having been fired by Sgt. Cleveland's weapon. The two fired cartridge
27 cases located in the scene photographs approximately 8-10 feet in front of and

1 slightly to the right side of the truck were also identified by the Orange County
2 Crime Lab as having been fired by Sgt. Cleveland's weapon.

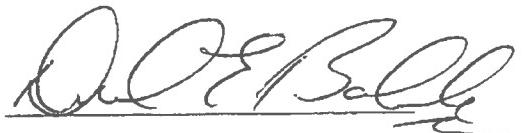
3 9. There were two bullet strikes noted in the passenger side window and
4 window/doorframe of the truck. The bullet strike marked "L" was in the passenger
5 side door window. The second bullet strike, marked "M," was slightly lower and
6 forward of the bullet strike marked "L." The bullet strike marked "M" contacts both
7 the passenger side window frame as well as the window glass.

8 10. Both bullet strikes "L" and "M" were caused by Sgt. Cleveland firing almost
9 directly from the right passenger side of the Chevrolet Silverado truck.

10 11. Sgt. Cleveland's two shots struck Mr. Orozco and Mr. Villanueva. The upper
11 hole in the passenger side door window ("L") is consistent with bullet wound #3 to
12 Mr. Villanueva, and the lower strike ("M") is consistent with the injury sustained to
13 Mr. Francisco Orozco's right elbow.

14 12. Sgt. Cleveland could not have been in front of the truck when these two shots
15 ("L" and "M") were fired. Based on the trajectory of the gunshots and the evidence
16 photographs, Sgt. Cleveland would have had to have been positioned to the right of
17 the passenger front door on the passenger side of the truck when he fired the two
18 shots attributed to his weapon, and not in the path of the Chevrolet Silverado truck.
19

20 I declare under penalty of perjury that the foregoing is true and correct, and
21 that this was executed this 11th day of July 2018 at Canton,
22 Michigan.

23 
24

25 David E. Balash
26
27
28

EXHIBIT "1"

DAVID E. BALASH
41906 Echo Forest Ct.
Canton, Michigan 48188
Phone # 734-981-6788 Fax 734-981-6459

CURRICULUM VITAE

PERSONAL:	Born: Detroit, Michigan 1-19-45 Raised: Bay City, Michigan Married for over 49 years with 2 children
CURRENT	3-1-92 – Present. I have been working as an Independent Firearms Examiner/Forensic Science Consultant. This work entails examination of evidence, case evaluations and crime scene re-construction consistent with work I performed at a crime laboratory.
POSITION:	03/2000 – May 2001 Supervision of the Oakland County Sheriff's Department Crime Laboratory Firearms Identification Unit in Pontiac, Michigan including responsibility for the training of a deputy sheriff as a firearms examiner.
EMPLOYMENT HISTORY:	Michigan Department of State Police - Enlisted 9-18-66. Graduated from recruit school 12-2-66 and assigned to the Niles Post. Transferred to the Sandusky Post from 5/69 until 12/71. Assigned to the Forensic Science Division on 1-2-72 – Promoted to D/Sgt. on 12/73 – Promoted to D/Lt. on 3/15/81 and retired as a D/Lt. on 2-29-92.
POSITION:	D/Lt. - Laboratory Specialist: Firearms/Tool Marks/Bomb Squad Unit Supervisor and the Crime Scene Assignment / Processing Supervisor for the Michigan State Police Northville Forensic Laboratory. This laboratory provided services free of charge for over 120 police agencies in Southeast Michigan. The Michigan State Police Northville Forensic Laboratory was one of the first A.S.C.L.A.D. Accredited laboratories in Michigan.
DUTIES:	<ul style="list-style-type: none">* Duties and responsibilities of an enlisted Michigan State Police Officer.* Supervisor of the trained firearms staff and the responsibility for training new examiners and assisting current examiners;* Research new methods of analysis both in the laboratory and at crime scenes; laboratory analysis of all submitted firearms, fired bullets, fired cartridge cases and ammunition;* Analysis of gunpowder patterns and gunshot residue cases;* Determination of bullet entrance and exit holes, bullet trajectories and flight paths;* Examination of weapons for operability, safety, functioning and alterations of mechanisms;* Examination of air rifles for function and power;* Blood spatter interpretation;

DUTIES CONT:

- * Tool mark and physical match examinations;
- * Develop and administer in-house proficiency testing for the firearms unit and the bomb squad;
- * Serial number restorations;
- * Formulating crime scene processing plans and directing crime scene crews comprised of both enlisted and civilian employees;
- * Crime scene investigation and reconstruction;
- * Crime scene photography and the instructing of laboratory personnel in crime scene photography;
- * Evidence collection and preservation in the laboratory, at crime scenes and at autopsy;
- * Advise medical personnel and assist them at autopsies;
- * Responsible for all bomb calls and explosive destruction complaints received by the laboratory from over 120 police agencies in SE Michigan;
- * Provide expert court testimony when requested;
- * Administrative duties in the absence of the laboratory director.

COURT

TESTIMONY:

Expert testimony has been accepted in Michigan Circuit Courts for the Counties of Wayne, Washtenaw, Oakland, Monroe, Livingston, Lenawee, Macomb, Allegan, Roscommon, Leelanau, Grand Traverse, Calhoun, Shiawassee, Chippewa, St. Clair and Kent Counties. Expert testimony has also been given in the District Courts for Wayne, Oakland, Washtenaw, Lenawee, and Livingston Counties and the Probate Courts in Wayne, Oakland, Washtenaw and Monroe Counties. I have also testified in United States District Courts of Michigan, Oklahoma, Indiana, Pennsylvania, California, Alabama, Maryland, Florida and Ohio as well as the State Circuit Courts for Wisconsin, Illinois, Mississippi, Oklahoma, New York, Delaware, Maryland and California. These testimonies exceed 400 occasions.

DEPOSITION

TESTIMONY:

I have offered expert testimony at depositions on over 75 occasions.

EDUCATION:

1972 - 1974

BA - Madonna College, Livonia, Michigan
Major: Social Science Minor: Criminal Justice

1965 - 1966

Michigan State University, E. Lansing, Michigan
General Studies

1963 - 1965

Delta College, Bay City, Michigan
General Studies

PROFESSIONAL ASSOCIATIONS:

- * Association of Firearm and Tool Mark Examiners - Life Member
- * International Association of Bomb Technicians and Investigators – Life Member
- *International Wound Ballistics Association through 2010
- * International Association of Bloodstain Pattern Analysts through 2010
- * Disaster Assistance and Recovery Team - Retired 2-29-92
- * FBI Bomb Data Program - Retired 2-29-92
- * Michigan State Police Command Officers Association
- * Treasurer of the Echo Forest Home Owners Association – 2014 – Currently

PROFESSIONAL TRAINING AND EXPERIENCE:

3-1-92 to Present	Independent Firearms Examiner/ Forensic Science Consultant	
9-18-66	Enlisted - Michigan State Police	Trooper
1-2-72 to 2-29-92	Michigan State Police Northville Forensic Laboratory	Firearms, Tool Marks, Bombs and Explosives
2-27-78 to 3-9-78	Smith and Wesson Firearms Springfield, Massachusetts	Armorer School
2-89	Sig/Sauer Firearms	Armorer School
2-90	American Academy of Forensic Science -	1 Week seminar/training in Cincinnati, Ohio
6-89	Glock Firearms	Armorer School
8/89	Michigan State Police – Conversion training on 9mm Sig/Sauer Model 226 semi-auto pistol	40 hours training
9-89	Blood Spatter Interpretation	3 Day Workshop
10-97	International Wound Ballistics Association	2 Day Conference
1-87	Federal Bureau of Investigation Training Academy - Quantico, Virginia	1 Week School Bombs and Equipment
3-74	Tours of various firearms, ammunition and explosive plants	Two Week Program
8-73	Hazardous Explosive Devices Course at the U.S. Army Redstone Arsenal - Huntsville, Alabama	Three Weeks Improvised Explosive Devices School

PROFESSIONAL TRAINING AND EXPERIENCE CONT:

Late 1980's	Advanced explosives program given by the BATF in Glenco, Georgia	Two-Week School
1980's	3 A.F.T.E. training seminars	
1972 – 1992	Many classes in photography. These classes were instructed by Kodak representatives as well as local photography experts.	Several one-week schools
3-91, 11-88	Hazardous Explosive Devices	6 - One Week
5-85, 1-82	Course at the U.S. Army Redstone	Refresher Schools
10-77, 1-76	Arsenal - Huntsville, Alabama	
2-72 thru 2-92 & 1995	Michigan State Police Bomb Squad training and explosive refresher courses.	Higgins Lake and other training sites
1973 thru 1992	Basis X-Ray training and interpretation at the Hazardous Devices School in Huntsville Alabama in 1973 and at all the subsequent refresher schools as well, including setting up the portable X-Ray's, intensifying screens and film, taking the X-Ray and reading the film to determine a course of action. X-Ray training, including fluoroscopy, continued throughout my remaining 19 years in the department, these skills being used at crime scenes, in the laboratory and at autopsies.	
2-72 thru Present	Many classes and seminars offered mostly through the Michigan State Police covering firearms training, crime scene processing, blood spatter analysis and investigative techniques which have not been noted in this C.V.	
1995 – 2004	Attended 6 – S.H.O.T. Shows (Shooting, Hunting, Outdoors and Technology) to remain current in the field of firearms, ammunition and technology.	

Quality training does not always take place in an academic setting. Some of the most valuable training I have received, unfortunately, has come at the expense of the lives of others. I have worked on thousands of cases that were submitted to the laboratory for analysis, as well as participating in hundreds of crime scene investigations. Each case that an examiner works on teaches that examiner. During the course of my career the following listed cases stand out as significant investigations:

- * Inkster Police Shooting - July, 1987. Three police officers were murdered at the Bungalow Motel in Inkster, Michigan. I headed the crime scene investigation and subsequent examination of over 400 items of evidence. My Circuit Court testimony lasted five days.

PROFESSIONAL TRAINING AND EXPERIENCE CONT:

- * Crash of Northwest Flight 255 – August 1987 – resulting in the death of 156 people. As assistant coordinator of the crash site, my responsibilities were to assemble recovery teams for body and property removal, grid the site and facilitate the recovery/identification effort. This crash led to the formation of the Disaster Assistance Recovery Team (D.A.R.T.) of which I was the Vice-Chairman. I have also assisted in the investigation of two other major airplane accidents.
- * Ecorse Police Officer Eddie Atkins – Prosecution for Homicide in 1974.
- * Shooting death of Detroit Police Officer Freddie Jackson.
- * Bombing death of Michael Vincenza.
- * Shooting death of Ypsilanti Police Officer Douglas Downing.
- * Shooting death of Leonard Bontekoe by a Ypsilanti Police Officer.
- * Beating death of Dorothy Tyburski – her body was in a freezer for 2 years.
- * Billy Hardesty Case.
- * Shooting of Davern Riley by Detroit PD
- * Shooting death of Michael Hill by Detroit PD
- * Shooting death of Sharon Solomon near Flint Michigan – Homicide/Suicide?
- * Shooting death of Mr. Timmerman in Allegan, Michigan
- * Shooting death of 4 people at a furniture store in Mississippi – I was retained by the defense and subpoenaed by the Prosecution for at least 5 trials on the same evidence against the same defendant.
- * The 2008 discovery of firearms errors at the Detroit Police Laboratory
- * The shooting death of banker David Widlak
- * There are multiple shooting cases both as an enlisted police officer as well as a civilian examiner which also could have been included in the above list of noteworthy cases

TEACHING EXPERIENCE:

6/91, 2/92, 10/92 11/93, 1/95, 11/95 9/96, 3/97, 11/97 10/98, 10/99 10/00 & 3/02	Schoolcraft College	13 - two week evidence collection and preservation classes
1982 - 1984	Detroit Edison Nuclear Security Personnel	7 - two-day classes Firearms/Explosives
1972 - 1992	Michigan State Police	Many classes on Firearms Identification Bombs and Explosives Evidence Collection
1997	Michigan State Police	2 Basic Crime Scene Photography Classes

Many Classes 1972 - 1997	Local Police Agencies	Firearms Identification Bombs and Explosives Evidence Collection
1972 - 1999	University of Michigan University of Detroit Wayne State University Madonna University Henry Ford Community College Schoolcraft Community College Washtenaw Community College Mercy College	Guest lectures on Firearms Identification, Tool Marks, Bombs and Explosives. Crime Scene Analysis
1998 & 1999	Michigan Defense Attorney's Association	Three presentations on utilizing a firearms/crime scene expert.
2011	Presentation to the 36 th District Court Judges	Firearms Identification / Crime Scene Expert
2017	I.A.B.T.I. training session at the Capital City Airport in Lansing, Michigan which included robot training and case reviews.	
2017	Old case review with MSP Northville Explosive Unit covering several old laboratory cases involving death by explosives.	

PUBLICATIONS:

1973 AFTE	A unique .25 auto caliber jacketed hollow point bullet made by Winchester-Western for the J.J. Jovino Co. of New York.
1998 AFTE	FRANGIBLE BULLETS: A FIREARMS EXAMINERS NIGHTMARE.

5/30/2017